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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,830	01/26/2001	Richard Braun	SCHWP0126US	7288

7590

03/29/2004

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EXAMINER
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JUNG, WILLIAM C

ART UNIT	PAPER NUMBER
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3737

12

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

08

**Office Action Summary**

Application No.

09/770,830

Applicant(s)

BRAUN ET AL.

Examiner

William Jung

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-7,9-12,17, and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,16,18-20 and 24 is/are allowed.
- 6) ☒ Claim(s) 3-7,9,11,12 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 10 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on January 26, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### **Entry of Amendment**

1. Applicant's amendments, filed on October 1, 2003 and November 3, 2003, as papers No. 9 and No. 11 respectively, are acknowledged. Claims 3-7, 9-12, 15-24 are pending and claims 1, 2, 8, 13, and 14 are cancelled.

### ***Response to Amendment***

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
3. Applicant's claims continue to be non-compliant, despite changes in the most recent amendment, filed November 3, 2003, because it fails to recite all the numbers of the claims and the status (cancelled, original, or amended) in particular, claims 13 and 14. However, given that claims 13 and 14 were already cancelled previously, such non-compliance does not preclude examination of the un-cancelled claims on the merits. Therefore, prosecution of the claims 3-7, 9-12, and 15-24 reopen.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 3-7, 9-12, and 15-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 3-7, 9, 11, 12, 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by *Cosman et al* (US 2002/0065461 A1).

Cosman et al teach a medical treatment device in the form of a LINAC or an X-ray bow as in claims 6, 11, that is positioned by a transportation means including a movable vehicle gantry (col. 3, lines 47-67) and an automatically-guided transporting system (col. 3, lines 47-67; col. 7, lines 1-42) wherein guidance is optical consisting optical tracking and math measuring device as described as elements 16 and 17 (col. 4, lines 13-24) with control including wire interface for external control as shown in elements 7 and 12 (Figure 1). The movable vehicle is self-driven as shown in elements 21 and 23 and an image generator in the form of a display unit, as in element 39 (Figure 1). Cosman et al further teach that a nuclear spin tomography device may be used in guiding as described in element 6 (col. 10, lines 37-49). While no actual magnetic flux density is disclosed, it is well known to one of ordinary skill in the art that the density may be adjusted to improve image and mark the coordinates of the patient to make accurate guidance.

#### ***Allowable Subject Matter***

7. Claims 15, 16, 18-20, and 24 are allowed.
8. Claims 10 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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*Cosman et al* (US 2002/0065461 A1) and *Jakab* (US 6,534,982)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung whose telephone number is 703-605-4364. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes or Brian Casler can be reached on 703-305-5181 or 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*WCS*  
March 18, 2004

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700